

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ROBERT A. KRONENBERGER

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Appeal No. 98-0361  
Application 08/394,725<sup>1</sup>

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ON BRIEF

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Before COHEN, ABRAMS, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Robert A. Kronenberger appeals from the final rejection

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<sup>1</sup> Application for patent filed February 27, 1995. According to appellant, the application is a continuation of Application 07/984,467, filed December 2, 1992, now abandoned. The record indicates that Application 07/984,467 was the subject of an earlier appeal to this Board (Appeal No. 94-3276). A decision in that appeal was rendered on September 22, 1994.

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of claims 1 through 24, all of the claims pending in the application. We reverse.

The invention relates to "headwear of the type having a crown and an associated depending rim/bill and, more particularly, to a headwear piece with coordinated ornamentation on the crown and rim/bill that produces a unique visual effect" (specification, page 1). A copy of the appealed claims appears in the appendix to the appellant's main brief (Paper No. 13).

The items relied upon by the examiner as evidence of obviousness are:

Simon	Des.188,029	May 24, 1960
Rife et al. (Rife)	5,111,366	May 5, 1992
Kellin et al. (Kellin)	5,136,726	Aug. 11, 1992

The item relied upon by the appellant as evidence of non-obviousness is:

The 37 CFR § 1.132 Declaration of Robert Kronenberger filed November 27, 1995 (part of Paper No. 7)

Claims 1 through 11 and 14 through 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kellin in view of Simon, and claims 12 and 13 stand rejected under 35

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U.S.C. § 103 as being unpatentable over Kellin in view of Simon or Rife.

Reference is made to the appellant's main and reply briefs (Paper Nos. 13 and 15) and to the examiner's answer (Paper No. 14) for the respective positions of the appellant and the examiner with regard to the merits of these rejections.

Kellin, the examiner's primary reference, discloses a baseball cap 32 having ornamentation in the form of separate decorative elements disposed over its external surface. Figure 6 shows that some of the decorative elements are attached to the crown of the cap and at least one decorative element is attached to the rim/bill. As tacitly conceded by the examiner, Kellin does not teach, and would not have suggested, a headwear piece meeting the limitations in independent claims 1 and 9 requiring first and second ornamentation parts which fully conform to or follow the contour of the crown and rim/bill, respectively, such that the second part of the ornamentation is a unitary continuation of and angularly disposed relative to the first part of the ornamentation to produce a three-dimensional visual effect.

The examiner's reliance on Simon to overcome this deficiency is not well taken.

Simon discloses a hat which arguably has a crown component and a rim/bill component. The hat includes ornamentation having first and second parts which fully conform to or follow the contour of the crown and rim/bill, respectively, such that the second part of the ornamentation is a unitary continuation of the first part of the ornamentation (see Figures 1 and 2). According to the examiner, "[t]o position the ornamentation 'C' in Fig. 6 of Kellin so that it overlaps and is attached to both the crown and rim/bill as suggested by Simon would have been obvious since this would involve an obvious matter of design choice" (answer, page 4).

The drawing figures of Kellin and Simon indicate, however, that the hats disclosed by these references are quite distinctive from one another. Whereas the Kellin hat is a typical baseball-type cap, the Simon hat is essentially cone-shaped with the rim/bill constituting a downward skirt-like extension of the crown. This rim/bill configuration and orientation differ markedly from those of the Kellin rim/bill.

Given the substantial differences between the rim/bill constructions disclosed by the two references, it is not evident how or why Simon's teaching of ornamentation having first and second parts which fully conform to or follow the contour of the crown and rim/bill, respectively, such that the second part is a unitary continuation of the first part would have suggested modifying the Kellin hat so as to arrive at the headwear piece recited in claims 1 and 9. In this regard, neither reference discloses ornamentation having the three-dimensional visual effect required by the claims. In this light, it is apparent that the examiner has engaged in an impermissible hindsight reconstruction of the invention set forth in claims 1 and 9 by using these claims as a blueprint to selectively pick and choose from among isolated elements in the prior art. Rife, applied to support the rejection of dependent claims 12 and 13, does not cure this fundamental flaw in the Kellin-Simon combination.

Thus, the prior art evidence relied upon by the examiner fails to establish a prima facie case of obviousness with respect to the subject matter recited in independent claims 1 and 9, and in claims 2 through 8 and 10 through 24 which

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depend therefrom.<sup>2</sup> Accordingly, we shall not sustain the standing 35 U.S.C. § 103 rejections of these claims.

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	BOARD OF PATENT
NEAL E. ABRAMS	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
JOHN P. McQUADE	)	
Administrative Patent Judge	)	

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<sup>2</sup> This being the case, we find it unnecessary to delve into the merits of the appellant's evidence of non-obviousness.

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JPM/pgg  
Wood Phillips Vansanten  
Hoffman & Ertel  
500 West Madison Street Suite 3800  
Chicago, IL 60661-2511